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DELINQUENT TAXES—TAXPAYER PAYING PENALTY ENTITLED TO REFUNDER UNDER H. B. NO. 663 AS AMENDED BY S. B. NO. 24 WHEN—DISTRIBUTION OF PROCEEDS OF FORECLOSURE SALE BY SHERIFF—AUTHORITY OF COUNTY TREASURER TO RECEIVE PAYMENT ON DELINQUENT TAXES.

SYLLABUS:

1. Upon compliance with the requirements of Section 1 of House Bill No. 663, enacted by the 90th General Assembly, as amended by Amended Senate Bill No. 24, of its first Special Session, a taxpayer who has prior to July 18, 1933, paid a penalty on delinquent real estate taxes or assessments assessed for the tax year 1932, such taxpayer is entitled to a refunder thereof.

2. The sheriff in making distribution of the proceeds of a foreclosure sale pursuant to an order of distribution issued by the court, even though by virtue of such order a portion of such distribution is made to the county treasurer in satisfaction of a finding of the court as to payment of taxes, is not "a person, firm or corporation charged with or legally authorized to pay real property taxes and assessments" within the meaning of Section 1 of House Bill No. 663, of the 90th General Assembly, as amended.

3. When, pursuant to the provisions of Section 1, of House Bill No. 663 of the 90th General Assembly, as amended, a taxpayer tenders his money to the county treasurer in payment of delinquent 1932 real estate taxes and assessments, but without penalty, prior to October 20, 1933, but after the August settlement between the county auditor and the county treasurer, the county treasurer has no authority to receive such payment except on a warrant, draft or pay-in-order of the county auditor. However, if the 1933 real estate tax duplicate has been delivered to the treasurer, such duplicate is the authority for the receipt of such items of tax, and the receipt should be noted therein.

4. When the county treasurer receives a payment of taxes after the August tax settlement and before the delivery to him of the duplicate for the current year, by authority of a warrant, draft or pay-in-order of the county auditor, such payment should be credited by the treasurer as in payment of the warrant and not on a duplicate which is not legally in the possession of the treasurer.

COLUMBUS, OHIO, October 16, 1933.

HON. LOUIS J. SCHNEIDER, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion concerning the following queries presented to you by the Treasurer of Hamilton County:

"In accordance with Amended Senate Bill 24, I would like to ask your opinion on the following questions:

1. Shall refunds of penalty be made where December, 1932, real estate taxes were paid prior to July 18, 1933?

2. Shall penalties be refunded where payments were made by the sheriff out of proceeds received from foreclosure sales?

3. Is it mandatory that the Treasurer open his books for the collection of real estate taxes even though they have been closed for some

time and complete settlement has been made with the County Auditor who has made distribution to the various taxing districts?

4. Can this office accept payment of 1932 taxes less penalty, and credit the payments at the opening of the December, 1933, collection?"

Section 1 of House Bill No. 663, enacted by the 90th General Assembly, was amended by Amended Senate Bill No. 24 enacted by the First Special Session of such Assembly, to read:

"Any person, firm or corporation charged with or legally authorized to pay real property taxes and assessments which have become delinquent for the year 1932, may, at any time prior to the twentieth day of October, 1933, or thereafter during an extension of the tax commission, for payment of the second half of the 1932 taxes, under the provisions of section 2657 G. C., pay the principal sum of such delinquent taxes and assessments without penalty, interest and other charges; and the county treasurer is hereby authorized to receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges, anything in the permanent statutes of this state to the contrary notwithstanding. Provided that in case a penalty has been paid on account of delinquent taxes and/or assessments for the first or second half of the year 1932, such penalty shall be refunded on order of the county auditor directed to the county treasurer provided the principal sum of such taxes and assessments is paid prior to the twentieth day of October, 1933, or thereafter, during an extension of the tax commission for payment of the second half of the 1932 taxes, under the provisions of section 2657 G. C."

This section as so amended, provides that any person charged with or legally authorized to pay real property taxes or assessments for the year 1932, which have become delinquent, may pay the same without penalty:

1. At any time prior to October 20, 1933.
2. At any time prior to or during the extension of the time of payment of taxes as fixed by the Tax Commission of Ohio.

The perplexity of your inquiry arises by reason of the above provision which I have numbered "1" and the statutory provisions as to the authority of the county treasurer to receive taxes. The only authority of the county treasurer to receive moneys is the tax duplicates and warrants of the county auditor concerning items not appearing on such duplicates. As stated by Burkett, C. J., in *Hull vs. Alexander*, 69 O. S. 75, at page 90:

"He (the county treasurer) performs his whole duty when he collects the money charged on the tax duplicate and delinquent list delivered to him by the auditor for collection, or charged upon a warrant or draft delivered to him by the auditor to receive money."

See also *Aetna Casualty & Insurance Co. vs. Ginder*, 114 O. S. 52.

Section 2653, General Code, defines the time within which real or unclassified personal property taxes may ordinarily be paid.

Section 2657, General Code, provides that the county commissioners may extend the time for the payment of the real and unclassified personal property

taxes for each semi-annual installment until February 20th and July 20th respectively.

Section 2657, General Code, provides further that the Tax Commission "in case of an emergency unavoidably delaying the delivery of the duplicates for the collection of taxes" may extend the time of the payment of taxes until such time as is fixed in the order of the commission.

Sections 2596 and 2683, General Code, fix the time for the semi-annual settlements between the county treasurer and the county auditor. The time of settlement for the last semi-annual installment of real and unclassified personal property taxes is fixed as, "on or before the 10th day of August of each year." It is evident from the language of this section that after such August settlement the county treasurer can legally have no tax duplicates in his possession as authority to receive or collect taxes. *Ratterman vs. Ingalls*, 10 O. Dec. Repr't. 745, 748; 23 Bulletin 260.

I am unable to find any authorization for the possession by the county treasurer of any tax list or duplicate of taxes on real estate until the delivery to him of the new list and duplicate on the first day of October. (Section 2583, G. C.)

It would thus appear that, unless the Tax Commission of Ohio had found that the delivery of the duplicate by the county auditor to the county treasurer after the February tax settlement had been unavoidably delayed and by reason thereof extended the time of payment of the last semi-annual installment of taxes until October first or thereafter, thereby delaying the settlement between the county auditor and the county treasurer until October 20th, between the dates of August 10th and October 1st the county treasurer could have no tax duplicate authorizing him to receive or collect taxes or assessments during such interval. If any tax payments were made during this interval, when the county treasurer was without legal possession of a duplicate, such payment could be legally received when accompanied by or preceded by a delivery of a warrant or draft of the county auditor authorizing such receipt. *Hull vs. Alexander, supra*; *Aetna Casualty & Insurance Co. vs. Ginder, supra*.

Although the statute provides that the taxpayer shall have the right to pay his taxes pursuant to its terms prior to October 20, 1933, "anything in the permanent statutes of this state to the contrary, notwithstanding" yet the language does not purport to override the provisions of the permanent statutes concerning the manner in which the county treasurer must receive his authority to receive funds into the county treasury.

By reason of the foregoing observations it would appear that your third inquiry must be answered in the negative. Since you state that the August settlement has been made between the county and the county treasurer in Hamilton County, such county treasurer is not legally possessed of any tax duplicate upon which the tax may be credited until the 1933 tax duplicate has been received by him. Such tax payment may be received by the county only by virtue of a warrant, draft or pay-in-order of the county auditor in the manner provided in Sections 2567 and 2645, General Code.

Similarly, in answer to your fourth inquiry, the payments so received by the county treasurer not having been received by authority of any tax duplicate but by the authority of the auditor's warrant, draft or pay-in-order, should be credited by the treasurer as in payment of such warrant, if such payments are received prior to the delivery of the 1933 duplicate.

However, if the county treasurer has received the delivery of the 1933 real estate duplicate, such duplicate would be the authority for the collection of the

tax and the receipt of such payment should be endorsed thereon in the manner provided in Section 2594, General Code.

In either case, the county treasurer is required to make settlement with the county auditor at his next semi-annual settlement with him. (Secs. 2596 and 2683, G. C.)

There is a further provision in such Section 1 of House Bill No. 663 as so amended, which authorizes the refunder of the penalty on the taxes for the year 1932 in the event that it shall have been paid by "Any person, firm or corporation charged with or legally authorized to pay real property taxes and assessments."

While there is a legal presumption that the legislature intends its acts to operate prospectively rather than retrospectively, yet a presumption may never be indulged in unless there is an ambiguity in the language of the statute. As stated in Black on Interpretation of Laws, Section 41:

"* * presumptions of this kind cannot prevail against the clear and explicit terms of the law. And if there is no room for doubt as to the meaning of the legislature, the courts must take the law as it stands, without any regard to the consequences."

The language of the statute is, "has been paid". The ordinary reference of such language is to some payment which has heretofore been made.

It is a general rule of interpretation alike applicable to the interpretation of statutes, that they are to be understood in their ordinary sense unless the context otherwise requires. Bearing in mind that the courts hold everyone to be familiar with all the laws, also that the statute in question expends its effect as to the right of payment of taxes pursuant to its provisions by October 20, 1933, that is, is only effective for such purpose from September 25, 1933, to October 20, 1933; it is hardly to be presumed that the legislative intent was to permit one who, with knowledge thereof, pays the penalty assessed after it became effective, to have it returned. I am unable to find anything in the context which would indicate that the legislature used the language "has been paid" but meant "which hereafter, on or before October 20, 1932, shall be paid." I must, therefore, answer your first inquiry in the affirmative.

During the month of August, 1933, I had occasion to render an opinion to construe the phrase, "Any person, firm or corporation charged with or legally authorized to pay real property taxes and assessments." (Opinion No. 1339.) In such opinion I held that the sheriff of a county in making distribution of the proceeds of a sale of lands "as on execution" or in foreclosure, was merely distributing funds pursuant to a court order, and was not "a person, firm or corporation charged with or legally authorized to pay real estate taxes and assessments." I have been informed that the courts of common pleas in two different counties had similarly ruled prior to my ruling. I therefore must answer your second inquiry in the negative.

Specifically answering your inquiries it is my opinion that:

1. Upon compliance with the requirements of Section 1, of House Bill No. 663, enacted by the 90th General Assembly, as amended by Amended Senate Bill No. 24, of its first Special Session, a taxpayer who has prior to July 18, 1933, paid a penalty on delinquent real estate taxes or assessments assessed for the tax year 1932, such taxpayer is entitled to a refunder thereof.

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of such order a portion of such distribution is made to the county treasurer in satisfaction of a finding of the court as to payment of taxes, is not "a person, firm or corporation charged with or legally authorized to pay real property taxes and assessments" within the meaning of Section 1 of House Bill No. 663, of the 90th General Assembly, as amended.

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Respectfully,
JOHN W. BRICKER,
Attorney General.

1738.

LIQUIDATED CLAIM—UNDER HOUSE BILL NO. 94 CLAIM FOR MONEY
ADVANCED TO MUNICIPAL CORPORATION IN 1919 FOR PAY-
MENT OF CULVERT CONSTRUCTED JOINTLY BY TWO MUNICI-
PALITIES, NOT LIQUIDATED CLAIM FOR PAYMENT OF TAXES.

SYLLABUS:

A claim for money advanced to a municipal corporation in the year 1919 for the purpose of enabling such corporation to pay its share of the cost of a culvert or bridge constructed jointly by two municipalities is not a "liquidated claim" within the meaning of the term as used in House Bill No. 94 of the 90th General Assembly, in the absence of a showing of compliance with the then provisions of the General Code with respect to the borrowing of money and the contracting of debts.

COLUMBUS, OHIO, October 16, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your request for my opinion predicated upon an inquiry which you enclose from the Director of Law of the city of Cleveland, which reads in part as follows:

"On August 5, 1919, West Park, then a separate municipality in Cuyahoga County, Ohio, passed an ordinance authorizing an agreement with The Crawford Land Company, whereby the latter was to pay \$15,000